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11/21/12

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
RICHARD BAREFOOT and)
VERA BAREFOOT,)
)
Defendants.)
_____)

CIVIL ACTION NO. 3:12-cv-189

JUDGE KIM R. GIBSON

ELECTRONICALLY FILED

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Barefoot Disposal Site in Blair County, Pennsylvania ("the Site").

B. On April 5, 1991, EPA issued an Administrative Order for Removal Response Activities, Docket No. III-91-32-DC, to Defendants Richard Barefoot and Vera Barefoot, *inter alia*, requiring them to perform response activities at the Site. On October 20, 1993, EPA issued another Administrative Order for Removal Response Activities, Docket No. III-93-46-DC, to

several other potentially responsible parties requiring them to perform response activities at the Site. On June 14, 1994, EPA issued an amendment to the Administrative Order issued in 1991, providing for the design and implementation of a cap system for the Site. Response actions pursuant to these Administrative Orders are ongoing at the Site.

C. On August 22, 1996, EPA issued an Administrative Order to Defendants Richard Barefoot and Vera Barefoot requiring them to preserve the integrity of the cap system at the Site and record a Notice in the Registry of Deeds describing the presence of hazardous substances and the presence of the cap system at the Site.

D. Collectively, these Administrative Orders are referred to herein as "Administrative Orders" or "AOs."

E. Nothing in this Consent Decree is intended to abrogate or excuse Defendants' obligations under the AOs, and the AOs remain in full force and effect.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

G. Settling Defendants are owners of the Site.

H. The United States alleges that the Settling Defendants are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

I. The United States has reviewed the Financial Information submitted by Settling Defendants to determine whether Settling Defendants are financially able to pay response costs

incurred and to be incurred at the Site. Based on this Financial Information, the United States has determined that Settling Defendants have limited financial ability to pay for response costs incurred and to be incurred at the Site.

J. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no

way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Administrative Orders" or "AOs" shall mean the Administrative Order for Removal Response Activities, EPA Docket No. III-91-32-DC, issued April 5, 1991; the Administrative Order for Removal Response Activities, EPA Docket No. III-93-46-DC, issued October 20, 1993; the First Amendment to the Administrative Order for Removal Response Activities Dated April 5, 1991, issued June 14, 1994; and the Administrative Order for Removal Response Activities, EPA Docket No. III-96-09-DC, issued August 22, 1996.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

i. "Financial Information" shall mean those financial documents identified in Appendix B.

j. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States incurs in connection with the Site after May 20, 2010 for response actions relating to Site Assessment until the date of a Remedial Site Assessment Decision for the Site. Future Response Costs shall also mean (i) all Future Oversight Costs the United States incurs in connection with the AOs and (ii) all costs, including but not limited to, direct and indirect costs that the United States incurred in connection with the Site before May 20, 2010, but did not pay until after May 20, 2010, for Site Assessment, and oversight of the AOs.

k. "Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and overseeing implementation of the AOs, including costs

incurred in reviewing plans, reports, and other deliverables submitted pursuant to the AOs.

Future Oversight Costs do not include, *inter alia*, any costs incurred by the United States in enforcing the AOs.

l. "Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that:

(a) limit land, water, and/or resource use to minimize the potential for human exposure to hazardous substances at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

m. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

n. "Lyondell Settlement" shall mean the settlement agreement approved by the United States Bankruptcy Court for the Southern District of New York on April 23, 2010, in the matter of *In re: Lyondell Chemical Company, et al.*, Case No. 09-10023.

o. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

p. "Parties" shall mean the United States and Settling Defendants.

q. "Past Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States has paid at or in connection with the Site through May 20, 2010, plus accrued Interest on all such costs through such date.

r. "Plaintiff" shall mean the United States.

s. "Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

t. "Response Costs" shall mean both Past Response Costs and Future Response Costs.

u. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

v. "Settling Defendants" shall mean Richard Barefoot and Vera Barefoot.

w. "Site" shall mean the Barefoot Disposal Site located on approximately 42.8 acres on Catfish Ridge in Blair County, Pennsylvania, identified in the deed attached in Appendix A to this Consent Decree.

x. "Site Assessment" shall mean activities taken by EPA in relation to the Site pursuant to 40 C.F.R § 300.420 of the National Contingency Plan, including but not limited to, the collection of data for use in Site evaluation and hazard ranking activities to form a recommendation by EPA on whether further action is warranted, as set forth in the Remedial Site Assessment Decision for the Site.

y. "Special Account" shall mean the Barefoot Disposal Site Special Account, within the EPA Hazardous Substances Superfund, established for the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

z. "Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

aa. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for the Settling Defendants to make a cash payment, to provide Site access, and to implement Institutional Controls, to resolve its alleged civil liability for the Site under Section 107 of CERCLA, 42 U.S.C. § 9607, as provided in the Covenants Not to Sue by Plaintiffs in Section VIII, and subject to the Reservation of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Settling Defendants shall pay to the EPA Hazardous Substance Superfund the principal amount of \$15,000 (\$11,781.24 principal plus \$218.76 accrued Interest) as provided for below. Payment shall be made in five installments as follows:

- a. Within 30 Days of the Effective Date of this Consent Decree, Settling Defendants shall pay \$3,000 of which \$3,000 will be in principal;
- b. Within one year of the Effective Date of this Consent Decree, Settling

Defendants shall pay an additional \$3,000 of which \$2,912.82 will be in principal and \$87.18 in Interest;

c. Within two years of the Effective Date of this Consent Decree, Settling Defendants shall pay an additional \$3,000 of which \$2,934.37 will be in principal and \$65.63 in Interest;

d. Within three years of the Effective Date of this Consent Decree, Settling Defendants shall pay an additional \$3,000 of which \$2,956.09 will be in principal and \$43.91 in Interest; and

e. Within four years of the Effective Date of this Consent Decree, Settling Defendants shall pay an additional \$3,000 of which \$2,977.96 will be in principal and \$22.04 in Interest.

6. Settling Defendants shall make payment(s) by official bank check made payable to "U.S. Department of Justice," referencing the name and address of the party making payment, the Site ID Number 036P, and DOJ Case Number 90-11-3-09307. Settling Defendants shall send each check to:

By regular mail to:

U.S. Department of Justice
Nationwide Central Intake Facility
P.O. Box 70932
Charlotte, NC 28272-0932

Or by overnight mail to:

QLP Wholesale Lockbox - D1113-022
Lockbox #70932
1525 West WT Harris Blvd.

Charlotte, NC 28262

7. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the Site ID Number 036P and DOJ Case Number 90-11-3-09307.

8. The total amount of each payment to be paid by Settling Defendants pursuant to Paragraph 5 shall be deposited in the Barefoot Disposal Site Special Account within the EPA Hazardous Substance Superfund. EPA, in its sole discretion, may retain and use these funds, and any other funds placed in the Barefoot Disposal Site Special Account, to conduct or finance response actions at or in connection with the Site, or to transfer such funds to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Accelerated Payments. If Settling Defendants fail to make any payment required by Paragraph 5 (Payment of Response Costs) by the required due date, all remaining installment payments shall become due immediately upon such failure.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, \$100 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be paid by official bank check made payable to "EPA Hazardous Substance Superfund." The check or letter accompanying the check shall identify the name and address of the party making the payment, the Site name, Site ID Number 036P, and DOJ Case Number 90-11-3-09307, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the Site ID Number 036P and DOJ Case Number 90-11-3-09307.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling

Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of one Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VIII. COVENANTS NOT TO SUE BY PLAINTIFF

15. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the first payment required by Section V, Paragraph 5 (Payment of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under

this Consent Decree, including but not limited to, payment of all amounts due under Section V (Payment of Response Costs), and any stipulated penalties due thereon under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendants and the financial, insurance, and indemnity certification made by Settling Defendants in Paragraph 39. If the Financial Information provided by Settling Defendants, or the financial, insurance, or indemnity certification made by Settling Defendants are subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendants shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 20 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendants' false or materially inaccurate information. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY UNITED STATES

16. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenants by Plaintiff in Section VII. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;

- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- e. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606; and
- f. liability for all costs, including, but not limited to, direct and indirect costs, that the United States may incur in connection with the Site due to Settling Defendants' failure to comply with the AOs, plus Interest on all such costs which may accrue pursuant to 42 U.S.C. § 9607(a). Such costs shall be excluded from the definition of Future Response Costs contained in this Consent Decree.

17. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendants, or the financial, insurance, or indemnity certification made by Settling Defendants in Paragraph 39 is false, or in any material respect, inaccurate.

X. COVENANTS NOT TO SUE BY SETTLING DEFENDANTS

18. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs and this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the Commonwealth of Pennsylvania, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Response Costs.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

20. Except as provided in Paragraph 21 (claims against other PRPs) and Paragraph 25 (Res Judicata and other Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section IX (Reservations of Rights by United States), other than in Paragraph 18.a (liability for failure to meet a requirement of the Consent Decree) or 18.b (criminal liability), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

21. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of

CERCLA) that they may have for all costs expended or to be expended in implementing the AOs and for Response Costs as defined by the Consent Decree against any person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

22. Except as provided in Paragraph 21 (claims against other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 21 (claims against other PRPs), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. 9613 § (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

23. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicial settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Response Costs as defined

herein.

24. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII.

26. The Parties agree that this Consent Decree satisfies any and all obligations of the United States to the Settling Defendants with respect to the distributions for Allowed General Unsecured Claims received by the United States pursuant to the Lyondell Settlement for the Barefoot Disposal Site, specifically any rights to a credit pursuant to Paragraph 10 of Exhibit 1 to the Lyondell Settlement, attached as Appendix C, to this Consent Decree.

XII. TRANSFERS OF REAL PROPERTY

27. Settling Defendants shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (a) to the transferee regarding the Consent Decree, any Institutional Controls regarding the real property, and the Consent Decree in *United States v. SKF USA Inc., et al.*, Civ. No. 3:09-174, attached as Appendix D to this Consent Decree; and (b) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree, any Institutional Controls regarding the real property, and the Consent Decree in *United States v. SKF USA Inc., et al.*, Civ. No. 3:09-174, attached as Appendix D to this Consent Decree.

28. Settling Defendants may Transfer any real property located at the Site only if: (a) any Proprietary Controls required by Paragraph 30.c have been recorded with respect to the real property; or (b) Settling Defendants have obtained an agreement from the transferee, enforceable by Settling Defendants and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 30.a and 30.b, (ii) record any Proprietary Controls on the real property, pursuant to Paragraph 30.c, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 30.c, and EPA has approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph, Settling Defendants shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Settling Defendants in obtaining compliance with the agreement. Settling Defendants shall reimburse upon demand the United States for all costs incurred, direct

or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

29. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Defendants shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

XIII. ACCESS AND INSTITUTIONAL CONTROLS

30. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by Settling Defendants:

a. Settling Defendants shall, commencing on the Effective Date, provide the United States and the Commonwealth of Pennsylvania and potentially responsible parties who have entered or may enter into an agreement with the United States for performance of response action at the Site or who have been or may be ordered to perform response action at the Site (hereinafter "Performing Parties"), and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity relating to response action at the Site, including, but not limited to, the following activities:

- (1) Monitoring, investigation, removal, remedial, or other activities at the Site;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Site;

- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing response actions at or near the Site;
- (6) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIII (Access to Information);
- (7) Assessing compliance by Settling Defendants and any Performing Parties;
- (8) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
- (9) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. commencing on the date of lodging of the Consent Decree, Settling Defendants shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to hazardous substances or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site. The restrictions shall include, but not be limited to the following:

- (1) no action shall be taken which would in any way affect the integrity of the cap system, including the cover system and drainage pipes, installed on the Site pursuant to

the AOs;

(2) no action shall be taken which would in any way affect the integrity of the fence installed on the Site pursuant to the AOs;

(3) no groundwater wells for any purpose shall be installed on the Site unless Pennsylvania Department of Conservation and Natural Resources and Blair Township Permit Officer are given notice prior to such installation, which notice shall include a copy of the environmental covenant for the Site executed pursuant to Paragraph 30(c) below. A copy of the foregoing notice shall be sent contemporaneously to EPA in accordance with the Notice provision in Paragraph 40; and

(4) no excavation or digging of any type shall be permitted on the Site unless Blair Township Permit Officer is given notice prior to such excavation or digging, which notice shall include a copy of the environmental covenant for the Site executed pursuant to Paragraph 30(c) below. A copy of the foregoing notice shall be sent contemporaneously to EPA in accordance with the Notice provision in Paragraph 40.

c. Settling Defendants (Owner Settling Defendants) shall:

(1) execute and record in the Recorder's office of Blair County, Pennsylvania, pursuant to 27 Pa. C.S. §§ 6501-6517 of the Pennsylvania Uniform Environmental Covenants Act, an environmental covenant (Environmental Covenant) that: (i) grants a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 30.a; (ii) grants the right to enforce the use restrictions set forth in Paragraph 30.b; and (iii) provides notice of ongoing response actions at the Site, including Site

Assessment and activities under the AOs. The Environmental Covenant shall be in substantially the same form set forth in Appendix E to this Consent Decree and enforceable under the laws of Pennsylvania.

(2) grant the Environmental Covenant to the Settling Defendants (Holder Settling Defendants). The Holder Settling Defendants shall monitor, maintain, report on and enforce such Environmental Covenant. The Environmental Covenant shall specify EPA as the "agency," as defined by 27 Pa. C.S. § 6502, which shall have the right to enforce the covenant, pursuant to 27 Pa. C.S. § 6511(a)(2).

(3) no later than sixty (60) Days after the Effective Date, submit to EPA for review and approval regarding such real property a current title report or other evidence of title acceptable to EPA (hereinafter collectively referred to as "Title Evidence"). Within thirty (30) Days thereafter, the Settling Defendants shall use best efforts to obtain the release or subordination of all prior liens and encumbrances that may adversely affect or divest the Environmental Covenant (except in the event that EPA waives the release or subordination or such prior liens or encumbrances or in the event that, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

(4) within thirty (30) days of subordination or release of any liens or encumbrances (or in the event that EPA waives the release or subordination or such prior liens or encumbrances or in the event that, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances), update the Title Evidence submitted pursuant to Paragraph 30.c.(3), above, and record the Environmental Covenant with the

Recorder of Deeds, Blair County, Pennsylvania. Within thirty (30) Days of recording the Environmental Covenant, the Owner Settling Defendants shall provide EPA with final Title Evidence and a certified copy of the original recorded Environmental Covenant showing the clerk's recording stamps.

31. For purposes of Paragraph 30.c(3), "best efforts" includes the payment of reasonable sums of money to obtain an agreement to release or subordinate a prior lien or encumbrance. If, within 30 Days after the Effective Date, Settling Defendants have not obtained, pursuant to Paragraph 30.c(3), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 30. The United States may, as it deems appropriate, assist Settling Defendants in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse upon demand the United States for all costs incurred, direct or indirect, by the United States in obtaining such release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

32. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Settling Defendants shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

33. Notwithstanding any provision of this Consent Decree, the United States retains all of

its access, authorities, and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. ACCESS TO INFORMATION

34. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

35. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the Records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain Records are privileged under the

attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, it shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States on the grounds that they are privileged or confidential.

36. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS AND CERTIFICATION

37. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

38. After the conclusion of the 10-year document retention period in the preceding Paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such Records to EPA. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged or confidential.

39. Each Settling Defendant certifies individually that, to the best of his or her knowledge and belief, after thorough inquiry, he or she has

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to his or her potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing

of suit against him or her regarding the Site and that he or she has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA financial information that fairly, accurately, and materially sets forth his or her financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Defendants execute this Consent Decree; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

XVI. NOTICES AND SUBMISSIONS

40. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-09307)
P.O. Box 7611

Washington, D.C. 20044-7611

As to EPA:

Mary Rugala
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC42)
1650 Arch Street
Philadelphia, PA 19103

As to Settling Defendants:

Frederick Gieg, Esq.
Gieg and Gieg
401 N. Logan Blvd
Altoona, PA 16602

XVII. RETENTION OF JURISDICTION

41. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

42. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree:

“Appendix A” is the Deed;

“Appendix B” is the Financial Information;

“Appendix C” is Exhibit 1 to the Lyondell Settlement;

“Appendix D” is the Consent Decree in *U.S. v. SKF USA Inc., et al.*; and

“Appendix E” is the Environmental Covenant.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

43. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

44. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. SIGNATORIES/SERVICE

45. Each Settling Defendant to this Consent Decree and the Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

46. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

47. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants

hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXI. FINAL JUDGMENT

48. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 19th DAY OF November, 2012.

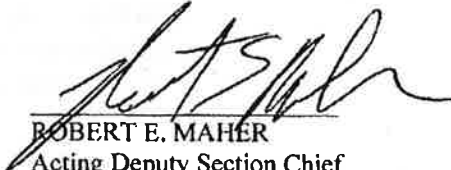
A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

Honorable Kim Gibson
United States District Judge

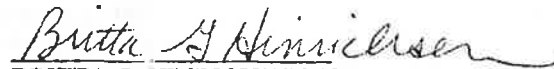
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Richard Barefoot and Vera Barefoot*, relating to the Barefoot Disposal Site.

FOR THE UNITED STATES OF AMERICA

Date: 9/4/12


ROBERT E. MAHER
Acting Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 9/5/12


BRITTA G. HINRICHSEN (OR 076469)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
Telephone: (202) 305-0427
Fax: (202) 616-6583
Email: britta.hinrichsen@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Richard Barefoot and Vera Barefoot*, relating to the Barefoot Disposal Site.

FOR THE UNITED STATES OF AMERICA

DAVID J. HICKTON
United States Attorney
Western District of Pennsylvania

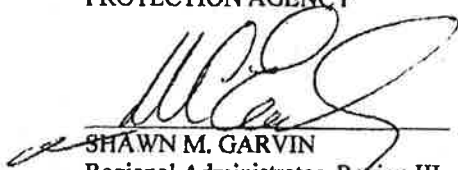
Date: 9-7-12

s/Paul E. Skirtich
PAUL E. SKIRTICH (PA 30440)
Assistant United States Attorney
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Telephone: (412) 894-7418
Fax: (412) 644-6995
Email: paul.skirtich@usdoj.gov

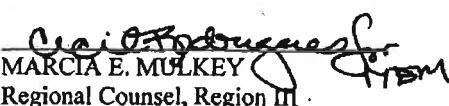
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Richard Barefoot and Vera Barefoot*, relating to the Barefoot Disposal Site.

FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY


Date: 9/4/12


SHAWN M. GARVIN
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Date: 8/30/2012


MARCIA E. MULKEY
Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

Date: 7/17/12


MARY E. RUGALA
Senior Assistant Regional Counsel, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Richard Barefoot and Vera Barefoot* (W.D.Pa), relating to the Barefoot Disposal Site.

FOR DEFENDANT RICHARD BAREFOOT

Date: 8/30/12


RICHARD BAREFOOT

Agent Authorized to Accept Service
on behalf of the above:

Name: Frederick B. Gieg, Jr., Esquire
Title: Attorney
Address: 401 North Logan Blvd.
Altoona, PA 16602

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Richard Barefoot and Vera Barefoot* (W.D.Pa), relating to the Barefoot Disposal Site.

FOR DEFENDANT VERA BAREFOOT

Date: 8-30-12


VERA BAREFOOT

Agent Authorized to Accept Service
on behalf of the above:

Name: Frederick B. Gieg, Jr., Esquire
Title: Attorney
Address: 401 North Logan Blvd.
Altoona, PA 16602

